UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 98-6029
Filed March 10, 1999

CHARLES F. GRESHAM,

Plaintiff-Appellant,

—v.—

MARVIN T. RUNYON, Postmaster General
United States Postal Service,

Defendant-Appellee.

Before PORFILIO, BARRETT, and KELLY, *Circuit Judges.*

ORDER

Appellant's petition for rehearing is denied.

The suggestion for rehearing en banc was transmitted to all of the judges of the court who are in regular active service as required by Fed. R. App. P. 35. As no member of the panel and no judge in regular active service on the court requested that the court be polled, the suggestion is also denied.

Entered for the Court

PATRICK FISHER, Clerk of Court

by: [ILLEGIBLE]
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 98-6029
(D.C. No. 96-CV-33)
(W.D. Okla.)
Filed December 14, 1998

CHARLES F. GRESHAM,

Plaintiff-Appellant,

—v.—

MARVIN T. RUNYON, Postmaster General
United States Postal Service,

Defendant-Appellee.

Before PORFILIO, BARRETT, and KELLY, *Circuit Judges.*

ORDER AND JUDGMENT*

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Plaintiff Charles F. Gresham filed suit alleging the United States Postal Service violated the Rehabilitation Act, 29 U.S.C. §§ 791, 794, when it declined to reinstate him to his former employment with the Postal Service because of his disability, epilepsy. Following a jury trial, the jury returned a verdict in favor of defendant. Plaintiff appeals the district court's rulings during trial and its order denying his post-trial motion for judgment as a matter of law and motion for a new trial. We affirm.

Plaintiff worked for the Postal Service until 1986 when he was discharged for on-the-job incidents he alleges were caused by his epilepsy. He was subsequently granted medical retirement from the Postal Service. Following a new drug therapy, plaintiff's condition improved and he applied to be rehired by the Postal Service in 1993. The Postal Service reviewed his work history and other documents, but not his medical records, and declined to offer him a position. Plaintiff maintains that he was entitled to an individualized consideration of his application because his past problems were caused by his disability. He claims the Postal Service's failure to accommodate him in the hiring process violated the Rehabilitation Act.

Plaintiff first challenges a sentence in jury instruction sixteen informing the jury that the Postal Service was not required to consider his application further if it had genuine concerns that plaintiff's past problems would recur. He argues that the instruction erroneously permitted the jury to find that the Postal Service was not required to consider his improved medical condition. "We review a district court's decision on whether to give a specific jury instruction for abuse of discretion, but we review the instructions themselves de novo to determine whether as a whole they state the governing law and provide the jury with a proper understanding of the issues." *Gunnell v. Utah Valley State College*, 152 F.3d 1253,

1259 (10th Cir. 1998). Here, the instructions properly guided the jury in its deliberations. The jury was free to conclude that the Postal Service believed plaintiff's problems would recur for reasons not related to his disability or that he was not qualified for the position he sought, thereby relieving the Postal Service from an obligation to evaluate his application further. *Cf.* 29 U.S.C. §§ 791, 794 (prohibiting disability discrimination against person otherwise qualified for job). Therefore, the district court did not abuse its discretion in giving the challenged instruction.

Plaintiff claims he was entitled to a judgment as a matter of law or a new trial pursuant to Fed. R. Civ. P. 50 and 59. We review de novo an order denying a party's request for a judgment as a matter of law, and will "upset the jury's conclusion only if the evidence points but one way and is susceptible to no reasonable inferences supporting the nonmoving party." *Webb v. ABF Freight Sys., Inc.*, 155 F.3d 1230, 1238 (10th Cir. 1998) (quotation omitted). An order denying a motion for a new trial is reviewed for an abuse of discretion and will be reversed "only if [the district court] made a clear error of judgment or exceeded the bounds of permissible choice in the circumstances." *Id.* at 1246 (quotation omitted).

Plaintiff argues that the Postal Service violated the Rehabilitation Act when it failed to examine whether his past unfavorable work record was caused by his disability and failed to evaluate his present medical condition. The jury heard evidence and received instructions on plaintiff's theory of his case. It was not required to find in plaintiffs favor. Rather, the jury was charged with evaluating the evidence and making the ultimate conclusions of fact. As stated above, the jury was free to find that plaintiff was not qualified for the position or that the Postal Service's hiring decision was not related to his disability. "[O]n appeal we view the evidence in the light most favorable to the jury's verdict and defer to its determinations on all issues of credibility of the witnesses, the inferences it may draw from the facts established, its resolution of conflicts in the evidence, and its ultimate conclusions of

fact." *Lampkin v. International Union, United Automobile, Aerospace & Agricultural Implement Workers of Am. (UAW)*, 154 F.3d 1136, 1142 (10th Cir. 1998). Under this standard, we affirm the district court's order denying plaintiffs motion for a judgment as a matter of law or a new trial.

Plaintiff next claims the district court erred in prohibiting him from eliciting the opinion testimony of his friend and former coworker that the Postal Service's stated reasons for not rehiring him were pretextual. We find no abuse of discretion in that ruling. *See Wright-Simmons v. City of Oklahoma City*, 155 F.3d 1264, 1268 (10th Cir. 1998) (district court's evidentiary rulings reviewed for abuse of discretion). Finally, we decline to address plaintiff's claims that the Postal Service failed to meet its affirmative burdens because the issue was raised for the first time on appeal. *See Walker v. Mather (In re Walker*, 959 F.2d 894, 896 (10th Cir. 1992) (appellate court will not consider issue on appeal that was not raised in district court).

The judgment of the United States District Court for the Western District of Oklahoma is AFFIRMED.

Entered for the Court

Paul J. Kelly, Jr.
Deputy Clerk

29 U.S.C. § 791(b)

(b) Federal agencies; affirmative action program plans

Each department, agency, and instrumentality (including the United States Postal Service and the Postal Rate Commission) in the executive branch shall, within one hundred and eighty days after September 26, 1973, submit to the Office of Personnel Management and to the Committee an affirmative action program plan for the hiring, placement, and advancement of handicapped individuals in such department, agency, or instrumentality. Such plan shall include a description of the extent to which and methods whereby the special needs of handicapped employees are being met. Such plan shall be updated annually, and shall be reviewed annually and approved by the Office, if the Office determines, after consultation with the Committee, that such plan provides sufficient assurances, procedures and commitments to provide adequate hiring, placement, and advancement opportunities for handicapped individuals.

Subpart G—Prohibition Against Discrimination Because of a Physical or Mental Handicap

General Provisions

§ 1613.701 Purpose and applicability

(a) *Purpose*. This subpart sets forth the policy under which an agency shall establish a continuing program to assure nondiscrimination on account of physical or mental handicap and the regulations under which an agency will process complaints of discrimination based on a physical or mental handicap.

(b) *Applicability*. (1) This subpart applies to executive agencies as defined in section 105 of title 5 of the United States Code and to those positions in the legislative and judicial branches of the Federal Government and the government of the District of Columbia which are in the competitive service.

(2) This subpart applies to the U.S. Postal Service and Postal Rate Commission.

(3) This subpart applies only to applicants and employees who have a handicap as defined in § 1613.702(a).

§ 1613.702 Purpose and applicability.

(a) *Handicapped person* is defined for this subpart as one who: (1) Has a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) has a record of such an impairment, or (3) is regarded has having such an impairment.

(b) *Physical or mental impairment* means (1) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; muscoskeletal; special sense organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or (2) any mental or psy-

chological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(c) *Major life activities* means functions, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(d) *Has a record of such an impairment* means has a history of, or has been classified (or misclassified) as having a mental or physical impairment that substantially limits one or more major life activities.

(e) *Is regarded as having such an impairment* means (1) has a physical or mental impairment that does not substantially limit major life activities but is treated by an employer as constituting such a limitation; (2) has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of an employer toward such impairment; (3) or has none of the impairments defined in paragraph (b) of this section but is treated by an employer as having such an impairment.

(f) *Qualified handicapped person* means with respect to employment, a handicapped person who, with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of the individual or others and who, depending upon the type of appointing authority being used:

(1) Meets the experience and/or education requirements (which may include passing a written test) of the position in question, or

(2) Meets the criteria for appointment under one of the special appointing authorities for handicapped persons.

§ 1613.703 General Policy.

Agencies shall give full consideration to the hiring, placement, and advancement of qualified mentally and physically handicapped persons. The Federal Government shall become a model employer of handicapped individuals. An agency shall not discriminate against a qualified physically or mentally handicapped person.

§ 1613.704 Reasonable accommodation.

(a) An agency shall make reasonable accommodation to the known physical or mental limitations of a qualified handicapped applicant or employee unless the agency can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include, but shall not be limited to: (1) Making facilities readily accessible to and usable by handicapped persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, the provision of readers and interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of the agency in question, factors to be considered include: (1) The overall size of the agency's program with respect to the number of employees, number and type of facilities and size of budget; (2) the type of agency operation, including the composition and structure of the agency's work force; and (3) the nature and the cost of the accommodation.

29 C.F.R. § 1614.203(d)(1)

(d) *Employment criteria.* (1) An agency may not make use of any employment test or other selection criterion that screens out or tends to screen out qualified individuals with handicaps or any class of individuals with handicaps unless:

(i) The agency demonstrates that the test score or other selection criterion is job-related for the position in question and consistent with business necessity; and

(ii) OPM or other examining authority shows that job-related alternative tests, or the agency show that job-related alternative criteria, that do not screen out or tend to screen out as many individuals with handicaps are unavailable.

29 C.F.R. § 1630.2(o)(i)

(o) *Reasonable accommodation.* (1) The term *reasonable accommodation* means:

(i) Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or

USPS Handbook Policy 313.53

313.53 Policy. It is USPS policy to refuse employment to persons who were removed from the Postal Service or from other federal employment for cause, or who resigned after being notified that charges proposing removal would be, or had been, issued. In exceptional cases where appointment of such an individual is contemplated, approval of the Field Director, Human Resources, or Manager, Employment and Development, must be obtained before employing any such former postal or federal employee. *Exception:* Division approval is not required if the former employee was separated for scheme or other qualification failure, and if the job for which considered does not require a similar ability. For example, a clerk separated solely for scheme failure could be considered for a carrier or mailhandler position without division approval.

INSTRUCTION NO. 16

"QUALIFIED INDIVIDUAL WITH A DISABILITY"—DEFINED

The term "qualified individual with a disability," as used in these instructions, means an individual with a disability who nevertheless can perform the essential functions of the employment position he holds or desires, either with or without a reasonable accommodation, and who meets experience and education requirements of the position. Also, to be qualified, a person must be able to perform the desired job without endangering the health or safety of himself or others.

In this case, the essential functions of the job Mr. Gresham sought as a Distribution Clerk are described in Defendant's Exhibit 15. He claims that he could perform these functions without receiving any accommodation whatsoever.

There exists a Postal Service regulation that declares an employee ineligible for reinstatement once he has been removed from service for cause. This regulation does not override the Postal Service's obligation under the Rehabilitation Act to give individualized consideration to an application for reinstatement by an otherwise qualified individual with a disability. To establish that he is otherwise qualified, however, a disabled person seeking reinstatement must prove that his prior removal was caused by a disabling condition that has improved and is not likely to recur. If the Postal Service had grounds for genuine concern that past problems would recur, it was not required to consider plaintiffs application further.

THE COURT—COUNSEL

MR. GARDENHIRE: Your Honor, if Mr. Feagins may join me, it may speed this up, not to argue but help me do some of the paperwork.

Your Honor, the basis of this motion is attendant upon Section 501 or 29 USC 791's requirement of an affirmative duty on behalf of the government to suggest reasonable accommodations in the face of a known disability. And I understand the Court's ruling with respect to disability. Let me make a very brief qualifying argument with regard to a disability, or indeed a record of disability, both of which are considered disabilities under the CFR and the statute.

That is that with respect to even the first prong, we contend that Mr. Gresham, is, in fact, disabled because the sole proof here, from not Mr. Gresham but his attending physician, is that he has epilepsy, which I think, a matter not open to serious dispute, uncontrolled would impair—substantially impair a major life function because he would go into convulsions but for the medicine.

We contend that the medicines only change one thing: They no longer make him not disabled but merely now a disabled person who is a qualifying individual to work, otherwise qualified notwithstanding that disability.

We contend in that regard that once that was made known or reasonably known, together with the request to not consider the work record, that that causes affirmative obligation upon the federal employer to suggest accommodations. And the testimony, if you may recall with Mrs. Littleton, I was trying to determine is she did anything in that regard, and the response was, "not until we make a job offer and then we—"

THE COURT: You know, they're in a box on that because if they start inquiring about these medical matters before they make a job offer, then they're violating regulations implementing the ADA.

MR. GARDENHIRE: Your Honor, that's correct, I'm not—again, there are a number of—what did I say earlier, oxymorons, procedural oxymorons. But here's the suggestion under the CFRs there are two particular regulations, and they're short, if I may get them.

THE COURT: And think about this, too, in connection with the argument: That I've already stated as—in response to Mrs. Thompson's argument that the entitlement under the Act is to individualized consideration and not for the job.

MR. GARDENHIRE: Yes, sir.

THE COURT: And I adhere to that with respect to your argument.

MR. GARDENHIRE: Yes, sir.

THE COURT: And consider also that even though Mr. Gresham says he's now okay, Doctor King says he's now okay, Mrs. Gresham says he's now okay, his friend says he's now okay. Boy, a friend like that we should all have, too, you're a very good friend. He still has presented himself simultaneously as being permanently and totally disabled, and the jury may well evaluate Doctor King's evidence without accepting it all. They don't have to conclude that there's no prospect of future recurrence of the conduct. And on those bases the jury could find, we don't have to hire him because he is disabled and disqualified.

MR. GARDENHIRE: Your Honor, I understand. And to clarify, again, I believe my argument does not raise those issues that were presented and the Court adjudicated, and I do accept under Pushkin and other cases that it is an individualized inquiry. If I may just very quickly quote one provision of 29 CFR Section 1614.203, the implementing regulations of the Rehabilitation Act, subpart—these are hard to read, subpart 6(d), I think is correct, but I will read it. It's employment criteria which says "An agency may not make use of any employment test or other selection criterion that screens out or tends to screen out qualified individuals with handicaps or any class."

That's the narrow provision that I'm referring to. And, of course, the ADA is considered in tandem, and under its reasonable accommodations, this only goes to the application process.

THE COURT: I understand. And I've already ruled that the Postal regulation on absolute bars cannot trump the Rehabilitation Act.

MR. GARDENHIRE: That's basically the essence of this motion, Your Honor.

THE COURT: But that doesn't mean that he gets the job.

MR. GARDENHIRE: No, sir. But what I'm arguing is—oh, I'm sorry, if I may. "Reasonable accommodation," that's under 29 CFR Section 1630.1—I'm sorry, Section 1630.2, subpart 2, "Reasonable accommodation may include—" I'm sorry, Subpart O, "The term 'reasonable accommodation' means modifications or adjustments to a job application process that enable a qualified applicant with a disability be considered for the position."

Those two things I read together, plus the requirement under Section 291—correction, 791, that there is an affirmative duty on behalf of the government employer to suggest an accommodation, and the undisputed evidence that no accommodation was even suggested would argue not for total damages or total liability but a finding at the close of evidence that the government failed in that respect to come forward with an affirmative obligation. And we've cited the Crane case, I know. Another case is the Buckingham case and I don't have the cite handy, I gave it to your law clerk yesterday, but that the evidence—the uncontroverted evidence is that in the face of a known disability, the government failed to come forward with any suggested accommodation. And that, while it might not award damages, at least in the equitable aspect would invite the Court's order directing the government to do that.

THE COURT: Let me repeat to Mrs. Thompson, I'm going to deny the motion unless you talk me out of it.

MRS. THOMPSON: Your Honor, but I just have to make one small response.

My opinion is that the status of the law is, our duty to accommodate doesn't rise until he comes forward with evidence that he needs accommodating or requests an accommodation. In this instance, he isn't asking for any accommodation from anybody.

And lastly on the trump issue, the law says that an employer does not have to tolerate egregious conduct from a handicapped person that he wouldn't have to tolerate from a non-handicapped person. And so I understand the Court has some concern about this postal policy, as you say, trumping the Rehabilitation Act, but the Tenth Circuit has made it clear that if the conduct—if the conduct is disqualifying separate and apart from the disability, the courts are not to inquire into agency policy that's based on sound policies and discretion.

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

No. CIV-96-0333-A
Filed October 20, 1997

CHARLES F. GRESHAM,

Plaintiff,

—VS.—

MARVIN T. RUNYON, JR., Postmaster General,
United States Postal Service,

Defendant.

PLAINTIFF'S MOTION FOR JUDGMENT N.O.V. AND MOTION FOR NEW TRIAL

Plaintiff, Charles, F. Gresham, pursuant to Rules 50(b) and 59, Fed.R.Civ.P., moves the Court to enter Judgment in favor of Plaintiff notwithstanding the verdict of the jury and, also, moves the court for a new trial, upon the grounds that:

(1) The verdict was against the great weight of evidence;

(2) The jury was improperly instructed that defendant could avoid its affirmative obligation to accord reasonable accommodation to a disabled person, who was otherwise qualified, upon a belief that the disabled person posed a threat to the

agency, thereby necessitating a new jury trial upon the issues of defendant's liability for damages; and,

(3) The jury's verdict could in any event not obviate the defendant agency's affirmative duty to extend a reasonable accommodation in the application process to a disabled person who had adduced evidence, unrebutted at trial, that the medical condition which had caused his prior work record was now under complete medical control; and the Court should in its equitable power and in aid of the legal requirement for an individualized remedy, based upon evidence that the plaintiff is and was at trial an otherwise qualified, disabled person, enter judgment against the defendant based upon its failure to extend reasonable accommodation, and further order that defendant extend a reasonable accommodation to plaintiff, by first, acknowledging that the prior work record was in whole or substantial part a product of plaintiff's disability, then uncontrolled, and second, that the defendant perform medical tests to confirm or deny Dr. King's opinion that Gresham's epilepsy and the byproducts thereof are now under medical control, allowing plaintiff to perform the essential job functions.

All as is more fully set forth in the supporting brief filed herewith and which is respectfully submitted.

/s/ GARY W. GARDENHIRE
GARY W. GARDENHIRE, OBA# 3235
KENNETH FEAGINS, OBA# 16560
629 24th Avenue S.W.
Norman, Oklahoma 73609
(405) 360-9700
(405) 360-7902 (fax)

ATTORNEYS FOR PLAINTIFF

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
CIVIL SERVICE RETIREMENT SYSTEM
Washington, D.C. 20415

Disability and Special Entitlements Division
Decision Summary

1. Name of Case ☑ Initial ☐ Reconsideration ☐ Appeal
2. New Evidence ☑ Yes ☐ No
3. Charles F. Gresham
4. Case Number A2578756
5. Age 40
6. Position Distribution clerk
7. Agency USPS
8. Pay Status ☐ LWOP ☐ Separated In Pay
9. Application Date 6-10-86
10. Filed by Dept. ☐ Yes ☑ No
11. Filed by OWCP ☐ Yes ☑ No

Summary of Applicant's Claim: Mixed epilepsy

Administrative Criteria

☑ 5 years creditable civilian service
☐ applied within 1-year limit (initial)
☐ 30-day time limit (recon)
☐ time limit waived

Disability Criteria

For each section, mark "yes" or "no".

NOTE: Comment on adequacy of evidence, cite specific evidence in case file, and explain the basis for your decision.

EVIDENCE IN THE CASE FILE IS ADEQUATE TO PROVE:

☑ Yes ☐ No

1. A DEFICIENCY IN SERVICE or the medical condition is incompatible with either useful service or retention in the position. (If yes, check either (a) or (b) below:)

   ☑ (a) a documented deficiency in service in either:
   - ☑ (1) performance,
   - ☑ (2) conduct, or
   - ☑ (3) attendance

   (Comment on conflicting evidence [e.g., performance recognition] and extent of absences.)

   See Supv. Stmt. to docum. appl's def. in svc.

   5/25/85 unacceptable

   OR

   ☐ (b) if there is no documented service deficiency, is there a medically warranted restriction from performing essential duties or from the workplace, based on the risk of:
   - ☐ (1) sudden or subtle incapacitation,
   - ☐ (2) further health impairment caused by working, or
   - ☐ (3) transmission of communicable disease.

   (Comment on likelihood and consequences of (1), (2), or (3).)

EVIDENCE IN THE CASE FILE IS ADEQUATE TO PROVE:

☑ Yes ☐ No

2. there is sufficient and relevant information documenting the presence of a medical condition, which is defined as a disease or injury. (Comment on history of condition and diagnostic/clinical testing.)

Paranoid features

Organic Brain Syndrome

Epilepsy petite mal and psychomotor epilepsy and increased paranoid features.

Have worked for [ILLEGIBLE] years to keep his job but has reached a point now it is impossible therefore recommend retirement

☑ Yes ☐ No

3. the MEDICAL CONDITION HAS CAUSED EITHER THE SERVICE DEFICIENCY or THE RESTRICTION from performing essential duties or from the workplace (If restrictions are warranted, either list the restrictions or identify the documents where the restrictions appear.)

Med. cond. has caused def. in serv. Appl. is unable to perf. in any employment capacity. Restr. from phys. are worr.

☑ Yes ☐ No

4. the medical condition will CONTINUE for at least a year from onset of condition. (Comment on whether the condition has stabilized, whether conclusions about prognosis and recovery expectations are warranted, and extent to which condition can be controlled or treated. Explain basis for decision for "no call-up" or "call-up".)

5609 Med. cond. is pre-existing and appl. has shown worsening of cond. Prognosis at this time is guarded. Recall in 3 yrs. to check phis. & mental status.

Signature [ILLEGIBLE] Date 9/15/86

EVIDENCE IN THE CASE FILE IS ADEQUATE TO PROVE:

☑ Yes ☐ No

5. the applicant's inability to render useful and efficient service due to a medical condition WHILE serving under the Civil Service Retirement System. (Indicate date of onset of medical condition.)

Appl. is unable to render useful & eff. serv. Date of incap. is 5/86.

☑ Yes ☐ No

6. the agency's inability to make REASONABLE ACCOMMODATION to the employee's medical condition. (Comment on agency efforts and reasons for not implementing ideas that were considered.)

Accomm. is not an option due to appl.'s med. cond.

☑ Yes ☐ No

7. absence of ANOTHER AVAILABLE POSITION, within the employing agency and commuting area at the same grade or pay level and tenure, for which the employee is qualified and for which accommodation would be reasonable. (Note if employee has refused reassignment.)

Med. cond. precludes reassign.

CONDITIONS FOR STAFF MEDICAL OFFICER

Signature of Disability Claim Specialist/Examiner
Cori Goskins

Date 9/16/86

MEDICAL OFFICER RESPONSE and COMMENTS:

Signature of Staff Medical Officer

Date

E: Medical Assessment

1. Medical History: Based upon review of Examinee's Medical History, Section B of this Form, [ILLEGIBLE HANDWRITTEN WORDS] records, (*if applicable*), outside medical records, etc., check appropriate box.

Note any significant past medical data that is pertinent to the physical requirements of the essential functions of the position applied for:

- ☐ No Significant Findings
- ☒ Significant Findings as Noted Below:
  Long history epilepsy & psychomotor seizures with amnesia.

2. Physical Findings: Based upon a complete hands-on physical examination, check appropriate box, and note any restrictions (*physical inabilities*) and/or limitations (*partial physical inabilities*) identified.

Note referral for specialist exam as required:

- ☒ No Limitations/Restrictions
- ☐ Limitations/Restrictions as Noted Below:
- ☐ Specialist Exam Required

3. Employment History: Based upon review of examinee's Form 2591, Application for Employment (*if applicable*). Supervisory Evaluations, prior job descriptions, etc., check appropriate box.

Note any significant historical employment data that is pertinent to any past or current medical condition noted. Note only that employment data which supports the examinee's ability or inability to perform the essential functions of the position for which the examinee has applied.

- ☐ No Significant Findings
- ☒ Significant Findings as Noted Below:

Psychomotor seizures at work, temporarily (up to 1/2 Hr) leading him to forsake his duties.

4. Risk Assessment: Based upon a review of findings as noted in nos. 1-3, above, indicate assessment of applicant's risk of incurring job related injury or illness, within the next six months, due to existing or past medical conditions.

☐ No Medical Risk/Restriction: Examinee is medically qualified to perform essential functions of the position without accommodation.

☐ Low Risk/Restriction: Examinee is medically qualified to perform the essential functions of the position at the time of examination, but periodic medical follow-up is recommended. (*See No. 5 below*)

☒ Moderate Risk/Restriction: Examinee would be medically qualified to perform essential function of the position only if above-noted limitations/restrictions can be accommodated (*See No. 5 below*)

☐ High Risk/Restriction: Applicant is not medically qualified to perform essential functions of the position. Accommodation will not reduce medical risk or restriction.

5. Suggested Accommodations: (*Job modifications which would allow applicant to perform essential functions of the positions effectively and safely.*)

No driving, working around moving machinery, customer contact, responsibility for [ILLEGIBLE] postage stamp or working alone.

Signature of Medical Authority
William E. Hill MD

Date 10/18/85

[stamp] William E. Hill MD
Area Medical Officer
U.S. Postal Service
320 S. W. 5th, ROOM 156
Oklahoma City, OK 73125-9409

OKLAHOMA MEMORIAL HOSPITAL
NEUROLOGY DEPARTMENT, RM. 6E-238
P. O. BOX 26307
OKLAHOMA CITY, OKLAHOMA 73126
405/271-3635

August 4, 1992

RE: Charles Gresham

To Whom It May Concern:

I have been asked to provide an update of medical condition for the above named patient. I have followed Mr. Gresham since October of 1990 when he was hospitalized for evaluation of seizures. At the time he was having these episodes multiple times per day. He was started on Tegretol in December of 1990 and since then has remained seizure free. He was taken off of his other seizure medications during this period of time. He was last examined on March 5, 1992 at which point he was found to have a normal neurological examination as well as partial general physical examination. His weight was 82.7 kilos, BP 130/78, pulse 76. He had a Tegretol level performed on that date indicating excellent compliance with a therapeutic level of 7.9 as well as a normal CBC and Chem-18. No other diagnostic testing has been performed recently. He currently carries a diagnosis of complex partial epilepsy. He appears to have complete control of his epilepsy on the current management and his prognosis for future control is quite good. He has been released to all pre-existing activities short of he is not allowed to fly airplanes commercially. It is not recommended that he be a scuba diver instructor. He is allowed to legally drive since he has demonstrated excellent compliance

and has been seizure free for greater than 1 year. He is encouraged to use good judgement and to take his medications faithfully.

Sincerely,

JEANNE ANN KING, M.D.
Jeanne Ann King, M.D.
Assistant Professor
Department of Neurology